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Statement:

WE hereby establish that, in addition to asserting our Civil Rights and protected property interests under the U.S. Constitution, we embody the pending claims and act in substitution of our deceased father Mr. Ezequiel Castro; as well as in substitution of our deceased mother Aurora Adames. The Castro family has acted as a single united entity; who shares the same protected property interests and property rights; who have jointly manifested the same claims through the voice and actions of Ramon Castro; and who now jointly present their united claims in the petition before this COURT.

By: Ramón E. Castro

Ramon E Castro -- Pro Se

By:

Ida L. Castro --Pro Se

Date: ___ December 11, 2006 _____

Not for Publication in West's Federal Reporter
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United States Court of Appeals

For the First Circuit

No. 05-1942

AURORA ADAMES, ET AL.,

Plaintiffs, Appellants,

THE ESTATE OF EXEQUIEL CASTRO RIVERA,

Plaintiff,

v.

FERNANDO FAGUNDO and HECTOR LÓPEZ-GARCIA,

Defendants, Appellees,

THE PUERTO RICO HIGHWAY AND TRANSPORTATION AUTHORITY,

Defendant and Third-Party Plaintiff, Appellee,

AMERICAN INTERNATIONAL INSURANCE COMPANY OF PUERTO RICO, INC. and L.P.C.&D., INC.,

Third-Party Defendants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

[Hon. Jose A. Fuste, U.S. District Judge]

Before

Torruella, Lynch, and Howard, Circuit Judges.

Ramón E. Castro, on brief pro se.

Leticia Casalduc-Rabell, Assistant Solicitor General, Maite Oronoz-Rodríguez, Deputy Solicitor General, Mariana Negrón-Vargas, Deputy Solicitor General, and Salvador J. Antonnetti-Stutts, Solicitor General, on brief for appellees Fernando Fagundo and Héctor López-García.

Raúl Castellanos-Malavé, on brief for co-appellee Puerto Rico Highway and Transportation Authority.

Pamela D. González, on brief for third-party defendant L.P.C.&D. Inc.

September 14, 2006

Per Curiam. After a thorough review of the record and of the parties' submissions, we affirm. We agree that the claims against the Puerto Rico Highway and Transportation Authority (PHRTA) and Fernando Fagundo are barred by principles of res judicata. "Under the federal law of res judicata, a final judgment on the merits of an action precludes the parties from relitigating claims that were raised or could have been raised in that action." Maher v. GSI Lumonics, Inc., 433 F.3d 123, 126 (1st Cir. 2005) (internal quotation marks and citations omitted). The appellants admit that they raised two of the instant claims – those having to do with invasions onto their land in September and November 2003 – in the previous federal proceeding. The remaining claims have to do with the proceedings in the expropriation court, and the appellants argue that they could not have raised those claims in the previous federal cases because they occurred after the filing of those Co..plaints. Nevertheless,

appellants could have brought those claims in the previous federal litigation by moving to amend their Complaint. Leave to amend should be "freely given," see Fed. R. Civ. P. 15(a), and Rule 15(c) specifically provides for supplemental pleadings "setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented." Their claims should have been added to the previous litigation because they are all part of the appellants' overarching due process claim that the PHRTA has had a "callous indifference to citizens' civil rights" throughout the process of the highway construction project. See Kale v. Combined Ins. Co. of America, 924 F.2d 1161, 1165 (1st Cir. 1991) (res judicata bars all related claims that could have been brought in previous action) (citing Fed. R. Civ. P. 8(e)(2) (a party may "state as many separate claims or defenses as the party has"); Fed. R. Civ. P. 18(a) (party may join "as many claims as the party has against an opposing party)).

Appellants also argue that res judicata does not apply here because the previous federal cases were not dismissed on the merits. See Maher, 433 F.3d at 126 (res judicata requires previous adjudication on the merits). But clearly the appellants are wrong in the characterization of the previous dismissal. The procedural and substantive due process claims were dismissed for failure to state a claim, and that dismissal was affirmed by this court. Such a dismissal is with prejudice unless the order of dismissal explicitly says otherwise (and here, there is no such explicit statement). See U.S. ex rel. Karvelas v. Melrose-Wakefield Hosp., 360 F.3d 220, 242 (1st Cir.) (citations omitted), cert. denied, 543 U.S. 820 (2004). Because the previous dismissal was with prejudice, res judicata precludes relitigation of claims that were or could have been raised in the previous case.

We also agree that the claims against the Honorable Hector López-Garcia are barred by the doctrine of judicial immunity. Citing Pulliam v. Allen, 466 U.S. 522 (1984),

appellants argue that judicial immunity does not apply to claims for injunctive and declaratory relief under section 1983 (they concede that they did not seek money damages against Judge López). While Pulliam did hold that judicial immunity was not a bar to claims for injunctive or declaratory relief under section 1983, see id. at 541-42, that case was superseded by statute in 1996. "[I]n any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable." Pub. L. No. 104-317, 110 Stat. 3847 (codified as amended at 42 U.S.C. § 1983 (1996)). The appellants do not argue that the statutory exceptions set out in this provision should apply. Accordingly, their challenge to the district court's decision on this point fails.

Finally, we note that dismissal of this action was proper for another reason: the claims which directly challenge the result of the state expropriation proceedings are barred by the Rooker-Feldman doctrine. See District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983); Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923). The Rooker-Feldman doctrine bars "cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280, 284 (2005). The doctrine applies where plaintiff explicitly seeks review of a state court judgment and also where review is implicitly sought. See Federación de Maestros v. Junta de Relaciones del Trabajo, 410 F.3d 17, 24 (1st Cir. 2005). The appellants lost in the state proceeding; they complain that they were injured as a result of Judge López's ruling; and judgment entered in the state case in November 2003, long before this case was filed in November 2004. They claim that the state proceeding was manipulated by the PHRTA, that Judge López was biased, that he illegally suppressed evidence, and that he acted without

jurisdiction. To the extent appellants are asking the federal court to review Judge López's decisions, their claims are barred by the Rooker-Feldman doctrine.

Affirmed. See 1st Cir. R. 27(c).

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

THE ESTATE OF EZEQUIEL CASTRO RIVERA, et al.,
Plaintiffs

Civil No. 04-2324 (JAF)

v.

FERNANDO FAGUNDO, et al., Defendants;

THE PUERTO RICO HIGHWAY AND TRANSPORTATION AUTHORITY,
Defendant and Third-Party Plaintiff,

v.

L.P.C.&D. INC. and AMERICAN INTERNATIONAL INSURANCE COMPANY OF PUERTO RICO, INC.,
Third-Party Defendants.

OPINION AND ORDER

Plaintiffs, Aurora Adames, Ida L. Castro, the estate of Ezequiel Castro Rivera, and Ramon E. Castro, bring the present action against Defendants, Fernando Fagundo, Hector Lopez, the Puerto Rico Highway and Transportation Authority ("PRHTA"), and unnamed persons and insurance companies, alleging violations under 42 U.S.C. § 1983 (2003 & Supp. 2004) and various state laws. Docket Document No. 1. Defendants Fernando Fagundo and Hector Lopez move to dismiss. Docket

Document No. 27. Defendant PRHTA, joined by Defendants Fernando Fagundo and Hector Lopez, move to dismiss, Docket Document Nos. 30,33

Defendant PRHTA brings a third-party claim for indemnity against third-party Defendants L. P. C. &D., Inc. and American International Insurance Company of Puerto Rico, Inc. Docket Document No. 32. Third-party Defendant L.P.C.&D. moves to dismiss. Docket Document No. 50.

I. Factual and Procedural Synopsis

Unless otherwise stated, we derive the following factual summary from Plaintiffs' complaint. Docket Document No.1. As we must, we "assume all plaintiffs' allegations are true and make all reasonable inferences in favor of the plaintiffs." Alternative Energy, Inc. v. St. Paul Fire and Marine Ins. Co., 267 F.3d 30, 36 (1st Cir. 2001).

Ezequiel Castro Rivera and his wife, Plaintiff Aurora Adames, owned a property located along the route of a state government highway project originally named Highway PR-66 and subsequently designated as the Eastern Corridor. Ezequiel Castro Rivera died on May 4, 2002, and is substituted in the current action by his children, Ramon E. Castro and Ida L. Castro.

Defendant Fernando Fagundo is the director of Defendant PRHTA.

Defendant Hector Lopez is a judge at the State Expropriations Court.

Third-party Defendant, **L.P.C.&D.,** is a Puerto Rico corporation, contracted by Defendant PRHTA to build various segments of the Eastern Corridor. Docket Document No. 32. Third-party Defendant American International Insurance Company of Puerto Rico is **L.P.C. &D.'s** insurance company. **Id.**

In 1964, Ezequiel Castro Rivera and Plaintiff Aurora Adames purchased the property which is the subject of the present dispute. In January 1998, Defendant PRHTA approached Ezequiel Castro Rivera and Aurora Adames with an offer to purchase a parcel of their land for use in the Eastern Corridor project. Based on a dispute over the appropriate appraisal value for their land, Plaintiffs filed a complaint with the Governmental Ethics Office against PRHTA personnel. PRHTA later initiated expropriation proceedings against Ezequiel Castro Rivera and Aurora Adames. On July 31, 2000, Ezequiel Castro Rivera, Aurora Adames, Ramon **E.** Castro, and Ida **L.** Castro brought suit against PRHTA and others in the Federal District Court of Puerto Rico for deprivations of Plaintiffs' due process and equal protection rights. Castro-Rivera **v.** PR Highway Authority, Case **No.** 00-1970 (RLA). In March 2000, Plaintiffs filed a renewed complaint before the Governmental Ethics Office. On April 19, 2000, the Puerto Rico Supreme Court permanently enjoined the Eastern Corridor project for deficiencies in the Environmental Impact Statement. Colon-Cortes **v.** Pesquera, CC-1999-0666, 2000 WL 424713, at *1 (**P.R.** Dec. **Apr.** 19, 2000)

On March 17, 2003, Ezequiel Castro Rivera, Aurora Adames, Ramon E. Castro, and Ida L. Castro again filed suit in federal district court against Fernando Fagundo, PRHTA, and others to address issues of improper drainage, environmental concerns, due process, and equal protection. Castro-Rivera v. Fagundo, Case No. 03-1287 (RLA).

On July 13, 2004, the State Appeals Court upheld the decision of the State Expropriations Court regarding the land appraisal value.

On November 30, 2004, Plaintiffs filed the present complaint alleging civil rights violations related to the property located near the Eastern Corridor, particularly with regard to the State Expropriations Court proceedings. Docket Document No.1. Plaintiffs allege violations of their due process and equal protection rights under 42 U.S.C. § 1983 and Puerto Rico law. Plaintiffs seek, inter alia, damages, injunctive relief, attorneys' fees, and costs.

On February 4, 2005, Defendants Fernando Fagundo and Hector Lopez filed a motion to dismiss, alleging that Plaintiffs' claims should be barred by the doctrines of res judicata and collateral estoppel and that Defendants are immune from suit on the basis of judicial and/or qualified immunity. Docket Document No. 27. Also on February 4, 2005, Defendant PRHTA filed a motion to dismiss against Plaintiffs Aurora Adames, Ida L. Castro, and the estate of Ezequiel Castro Rivera, arguing that Plaintiff Ramon E. Castro may not represent them pro se. Docket Document No. 30. On February 7, 2005, Defendant PRHTA filed a third-party complaint against third-party

Defendants American International Insurance Company of Puerto Rico and L.P.C.&D. Docket Document No. 32. On February 8, 2005, Defendants Fernando Fagundo and Hector Lopez moved to join Defendant PRHTA's February 4, 2005, motion to dismiss. Docket Document No. 33.

On February 17, 2005, Plaintiff filed a response to Defendants Fernando Fagundo and Hector Lopez' February 4, 2005, motion to dismiss. Docket Document No. 37. On March 22, 2005, third-party Defendant L. P. C. &D. filed a motion to dismiss Defendant PRHTA's third-party complaint, Docket Document No. 50, to which Defendant PRHTA replied on April 4, 2005. Docket Document No. 52.

III. Applicable Legal Standards

A. Motion to Dismiss Standard Under Rule 12(b)(1)

Under Rule 12(b) (1), a defendant may move to dismiss an action against her for lack of federal subject matter jurisdiction. See FED. R. Cry. P. 12 (b) (1) . Since federal courts are courts of limited jurisdiction, the party asserting jurisdiction has the burden of demonstrating the existence of it. See Murphy v. United States, 45 F.3d 520, 522 (1st Cir. 1995) (citation omitted). In assessing a motion to dismiss for lack of subject matter jurisdiction, a district court "must construe the complaint liberally, treating all well pleaded facts as true and drawing all reasonable inferences in favor of the plaintiffs." Vioueira v. First Bank, 140 F.3d 12, 16 (1st Cir.

1998) (citing Royal v. Leadino Edoe Prods., Inc., 833 F.2d 1 (1st Cir. 1987)). Additionally, a court may review any evidence, including submitted affidavits and depositions, to resolve factual disputes bearing upon the existence of jurisdiction. See Land v. Dollar, 330 u.S. 731, 734-35 (1947); Aversa v. United States, 99 F.3d 1200, 1210

(1st Cir. 1996) (citation omitted) .

B. Motion to Dismiss Standard Under 12(b)(6)

Under Rule 12(b) (6), a defendant may move to dismiss an action against him based solely on the pleadings for the plaintiff's failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12 (b) (6) . In assessing a motion to dismiss, "[w] e begin by accepting all well-pleaded facts as true, and we draw all reasonable inferences in favor of the [nonmovant]." Wash. Legal Found. v. Mass. Bar Found., 993 F.2d 962, 971 (1st Cir. 1993); see also Coyne v. City of Somerville, 972 F.2d 440, 442-43 (1st Cir. 1992). We then determine whether the plaintiff has stated a claim under which relief can be granted.

III. Analysis

A. Defendant PRHTA's Motion to Dismiss

Defendant PRHTA moves to dismiss the claims of Plaintiffs Aurora Adames, Ida L. Castro, and the estate of Ezequiel Castro Rivera, arguing that they are improperly represented by Plaintiff Ramon E.

Castro, a pro-se litigant. Docket Document No. 30. Defendants Fernando Fagundo and Hector Lopez move to join Defendant PRHTA's motion to dismiss. Docket Document No. 33.

According to Rule 83.1 (h) of the Local Rules of the United States District Court:

A person who is not a member of the bar of this Court, and who is not otherwise eligible for admission pursuant to these rules, will only be allowed to appear and practice before the Court pro se, that is, on his or her own behalf. That representation may not be delegated to any other person, including a spouse, parent or other relative, nor to any other party on the same side who is not represented by an attorney. A nonattorney guardian for a minor or an incompetent person must be represented by counsel.

L.Cv.R. 83.1(h).

With only Plaintiff Ramon E. Castro's signature appearing on the submitted pleadings and papers before this court, see FED. R. Cry. P. 11, and noting that "the 'right of self-representation is not a license not to comply with relevant rules of procedural and substantive law,'" Eagle Eye Fishing Corp. v. U. S. Dep't of Commerce, 20 F.3d 503, 506 (1st Cir. 1994) (quoting Andrews v. Bechtel Power Corp., 780 F.2d 124, 140 (1st Cir. 1985) (internal quotations omitted), we dismiss the causes action brought by Aurora Adames, Ida L. Castro, and the estate of Ezequiel Castro Rivera. Defendants PRHTA, Fernando Fagundo, and Hector Lopez' motion to dismiss is granted. Docket Document Nos. 30, 33.

B. Defendants Fernando Fagundo and Hector Lopez' Motion to Dismiss

Defendants Fernando Fagundo and Hector Lopez move to dismiss Plaintiff's complaint for lack of subject matter jurisdiction and failure to state a claim upon which relief can be granted. Docket Document No. 27. Specifically, Defendants argue that: (1) Plaintiff's claims are barred by res judicata and collateral estoppel; (2) Defendant Hector Lopez in his individual capacity is entitled to absolute judicial immunity; (3) in the alternative, Defendants Fernando Fagundo and Hector Lopez are entitled to qualified immunity in their individual capacities; and (4) in the absence of a federal basis for jurisdiction, Plaintiffs' state law claims should be dismissed. Id. We begin by discussing Defendants' res judicata argument.

Defendants contend that two earlier actions brought in this federal district court, Castro-Rivera v. Puerto Rico Highway Authority, Case No. 00-1970 (RLA) , and Castro-Rivera v. Fagundo, Case No. 03-1287 (RLA) , preclude Plaintiff from litigating the case before us. Docket Document No. 27.

1. Defendants' Res-Judicata Defense

1 Although Defendants' motion argues dismissal for all Plaintiffs named in the complaint, the claims of Plaintiffs Aurora Adames, Ida L. Castro, and the estate of Ezequiel Castro Rivera were dismissed as per our discussion supra. We, therefore, discuss Defendants' motion only as it pertains to the claims of Plaintiff Ramon E. Castro.

Res judicata generally "binds parties from litigating or relitigating any issue that was or could have been litigated in a prior adjudication and prevents claim splitting." Futura Dev. Corp. v. Centex Corp., 761 F.2d 33, 42 (1st Cir. 1985). The doctrine of res judicata prohibits a claim from being litigated repetitiously outside of the normal appeals process and furthers the goals of finality and certainty. We first note that in determining the res-judicata effects of a federal court decision on a subsequent federal court suit, federal law applies. In re El San Juan Hotel Corp., 841 F.2d 6, 9 (1st Cir. 1988). The res-judicata doctrine requires: "(1) a final judgment on the merits in an earlier action; (2) a sufficient identity between the parties in the two suits; and (3) a sufficient identity of the causes of action in the two suits." Ortiz-Cameron v. Drug Enforcement Admin., 139 F.3d 4, 5 (1st Cir. 1998) (citing Porn v. Nat'l Grange Mut. Ins. Co., 93 F.3d 31, 34 (1st Cir. 1996)); see also Boateng v. InterAmerican Univ., Inc., 210 F.3d 56, 61 (1st Cir. 2000). "Under the federal law of res judicata, a final judgment on the merits of an action precludes the parties or their privies from relitigating claims that were raised or could have been raised in that action." Apparel Art Int'l, Inc. v. Amertex Enter. Ltd., 48 F.3d 576, 583 (1st Cir. 1995).

Plaintiff's complaint relies heavily on cases Castro-Rivera v. Fagundo, Case No. 03-1287 (RLA) , and Castro-Rivera v. Puerto Rico Highway Authority, Case No. 00-1970 (RLA) , to set both the factual

basis and legal arguments outlined in his complaint. Docket Document No.1. We begin by considering Case No. 03-1287 (RLA).

Case No. 03-1287 resulted in a final decision on the merits, entered by Judge Acosta on March 18, 2004. Case No. 03-1287, Docket Document No. 49. Further, in both the present case and the one before Judge Acosta, Ramon E. Castro brought suit against Defendants Fernando Fagundo and PRHTA. Docket Document No.1; Case No. 03-1287, Docket Document No.1. Defendant Hector Lopez' presence in the present suit, has no bearing on the res-judicata inquiry. See Mashpee Tribe v. Watt, 707 F.3d 23, 24 (1st Cir. 1983) (rejecting the notion that the addition of another defendant would preclude res judicata).

As to the claims brought against Defendants Fernando Fagundo and PRHTA, because the parties to the two suits are substantially identical and the earlier case was decided on the merits, res judicata applies, as long as the two causes of action are essentially the same. The test to determine whether two causes of action are sufficiently related to support a res-judicata defense is "whether the causes of action arise out of a common nucleus of operative facts .... In mounting this inquiry, we routinely ask 'whether the facts are related in time, space, origin, or motivation, whether they form a convenient trial unit, and whether their treatment as a unit conforms to the parties' expectations.'" Mass. School of Law at Andover, Inc. v. Am. Bar Ass'n, 142 F.3d 26, 38 (1st Cir. 1998)

(quoting Aunyz Corp. v. Canon U.S.A., Inc., 978 F.2d 3, 6 (1st Cir. 1992) (internal citations omitted); Gonzalez v. Banco Cent. Corp., 27 F.3d 751, 755 (1st Cir. 1994) ("To determine whether sufficient subject matter identity exists between an earlier and a later suit, federal courts employ a transactional approach."). "A single cause of action can manifest itself in an outpouring of different claims, based variously on federal statutes, state statutes, and the common law." Kale v. Combined Ins. Co. of Am., 924 F.2d 1161, 1166 (1st Cir. 1991). "The necessary identity will be found to exist if both sets of claims- those asserted in the earlier action and those asserted in the subsequent action- derive from a common nucleus of operative facts. See id. This principle pertains no matter how diverse or prolific the claims themselves may be." Gonzalez v. Banco Cent. Corp., 27 F.3d 751, 755 (1st Cir. 1994).

In his complaint, Plaintiff states that in their previous claims, "[t]he Castro family has sought the protection of the Federal Courts against a Pre-Deprivation Due Process Violation; the Improper Drainage; Violations of Environmental law; Retaliation, and multiple other issues including the deprivation of Due Process and the denial of the Equal Protection of the Law -all of which has led to Federal Cases 00-1970 RLA and 03-1287 RLA which are currently under appeal." Docket Document No.1. Try as we may to wade through the allegations set forth in Plaintiff's excessively lengthy and often murky complaint, we are unable to find claims against Defendants Fernando

Fagundo and PRHTA which differ from those asserted in Plaintiff's previous federal actions. Each federal action was brought in relation to the highway property and Plaintiff previously asserted the same due process and equal protection claims. As such, we find that the causes of action brought in the present case are sufficiently similar to those brought previously to support a finding of res judicata. We grant Defendants Fernando Fagundo and PRHTA's motion to dismiss the claims brought against them. Docket Document No. 27.

2. Defendants' Immunity Defense

As to the remaining claims against Defendant Hector Lopez, Defendants argue that as a state court judge, he is immune from liability under the doctrine of judicial immunity. rd. The claims against Defendant Hector Lopez relate to various acts or decisions he made in his official capacity as a judge, including his alleged suppression of evidence and his decision to refuse to "investigate and explore important issues of improper documents and/or improper surveys." Docket Document No.1.

"Except where judges act completely without jurisdiction, they are protected from liability under section 1983 by the well-established doctrine of judicial immunity." Slotnick v. Garfinkle, 632 F.2d 163, 166 (1st Cir. 1980) (citing Stump v. Sparkman, 435 u.S. 349, 355-57 (1978)). "Disagreement with the action taken by a judge . . . does not justify depriving that judge

of his immunity." Stump, 435 u.s. at 363; Cok v. Cosentino, 876 F.2d 1, 2 (1 st Cir. 1989) ("Only judicial actions taken in the clear absence of all jurisdiction will deprive a judge of absolute immunity."); Brown v. Newberger, 291 F.3d 89, 94 (1st Cir. 2002) (relying on Cok to determine the expansive scope of judicial immunity). Accordingly, we grant Defendants' motion to dismiss the claims against Defendant Hector Lopez. As such, we need not discuss Defendants' other grounds for dismissal.

3. Supplemental Jurisdiction

Because all of Plaintiff's federal claims have been dismissed, we decline to exercise supplemental jurisdiction over Plaintiff's associated state-law claims. Rivera v. Murphy, 979 F.2d 259, 264 (1st Cir. 1992) (quoting Cullen v. Mattaliano, 690 F. Supp. 93 (D. Mass. 1988) ("It is the settled rule in this Circuit that in a non-diversity case, where pendent state claims are joined with a federal cause of action and that the federal cause of action is [dismissed] ... the pendent state claims should be dismissed.")).

C. Third-Party Defendant L.P.C.& D.'s Motion to Dismiss

Third-party Defendant L.P.C.&D. moves to dismiss, averring that the third-party complaint, which adopts by reference the jurisdictional basis pleaded by Plaintiff in the original complaint, is lacking in federal subject matter jurisdiction. Docket Document No. 50. Defendant PRHTA, in response, declares that it asserts its third-party complaint only to the extent that this court rules

favorably on Plaintiff's original complaint. Docket Document No. 52. Because we have dismissed the claims brought by Plaintiff Ramon E. Castro, we dismiss the third-party complaint brought by Defendant PRHTA against third-party Defendants L. P. C. &D and American International Insurance Company of Puerto Rico, Inc. We, therefore, need not consider third-party Defendant L.P.C.&D.'s motion to dismiss. Docket Document No. 50.

v. Conclusion

In accordance with the foregoing, the court **GRANTS** Defendant PRHTA's motion to dismiss, Docket Document No. 30, to which Defendants Fernando Fagundo and Hector Lopez join. Docket Document No. 33. We similarly **GRANT** Defendants Fernando Fagundo and Hector Lopez' motion to dismiss. Docket Document No. 27. We dismiss the third-party complaint brought by Defendant PRHTA against third-party Defendants L.P.C.&D. and American International Insurance Company of Puerto Rico, Inc. Docket Document No. 32. Judgment to be entered accordingly.

IT IS SO ORDERED.

San Juan, Puerto Rico, this 19th day of April, 2005.

S/Jose Antonio Fuste JOSE ANTONIO FUSTE Chief U. S. District Judge

Not For Publication in West's Federal Reporter Citation
Limited Pursuant to 1st Cir. Loc. R. 32.3

United States Court of Appeals For the First Circuit

No. 04-1604

EZEQUIEL CASTRO-RIVERA, ET AL., Plaintiffs, Appellants,

v.

FERNANDO FAGUNDO, ET AL., Defendants, Appellees.

No. 04-1635

AURORA ADAMES, ET AL., Plaintiffs, Appellants,

v.

PUERTO RICO HIGHWAY AND TRANSPORTATION AUTHORITY, ET AL., Defendants, Appellees.

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO
[Hon. Raymond L. Acosta, Senior U.S. District Judge]

Before
Boudin, Chief Judge, Lipez and Howard, Circuit Judges.

Ramon E. Castro, Ida L. Castro and Aurora Adames on brief pro se

Raul Castellanos-Malave and E. Umpierre Suarez. C. S . P. on brief for appellee Puerto Rico Highway and Transportation Authority.
Juan J. Villella-Janeiro on brief for appellee Barrett & Hale.
Francisco Rios-Rivera and Llovet Zurinaga & Lopez. P.S.C. on brief for appellee Esteban Mujica.

May 6, 2005

Per Curiam.

After a thorough review of the record and of the parties' lengthy submissions, we affirm the district court's dismissal of the federal claims in these cases pursuant to Fed. R. Civ. P. 12 (b) (6). The just compensation claim was not ripe at the time it was dismissed. See Williamson County Reg'l Planning Comm'n v. Hamilton Bank, 473 U.S. 172 (1985). Appellants suggest that the state procedures for obtaining just compensation are inadequate because they do not provide for recovery of attorney's fees; but there is no authority for this suggestion. The American Rule is well-established, and it provides that attorney's fees "are not ordinarily recoverable in the absence of a statute or enforceable contract providing therefor." Fleischmann Distilling Corp. v. Maier Brewing Co., 386 U.S. 714, 717 (1967).

The district court also was correct to dismiss the procedural and substantive due process claims. Appellants seem to concede that they were afforded notice and an opportunity to be heard by the Environmental Quality Board that developed the Environmental Impact Statement in question. But, where a plaintiff claims his procedural due process rights were violated, the federal court's only concern should be whether the procedure afforded was constitutionally adequate; and the local procedures here suffice. The appellants' claim that government officials acted arbitrarily and/or in violation of state law and procedures is a substantive due process claim. See Zinermon v. Burch, 494 U.S. 113 (1990).

Not every incorrect decision by a state administrative body rises to the level of a due process violation. See PFZ Properties, Inc. v. Rodriguez, 928 F.2d 28, 31 (1st Cir. 1991) ("Even where state officials have allegedly violated state law or administrative procedures, such violations do not ordinarily rise to the level of a constitutional

deprivation.") (citation omitted). "Our cases make clear that regulatory board does not transgress constitutional due process requirements merely by making decisions 'for erroneous reasons' or by making 'demands which arguably exceed its authority under the relevant state statutes.'" Amsted v . Moran, 904 F.2d 748, 757 (1st Cir. 1990) (quoting Creative Env'ts, Inc. v Estabrook, 680 F.2d 822, 832 n. 9 (1st Cir. 1982)). The court will allow substantive due process claims to proceed" in truly horrendous situations," Nestor Colon Medina & Succesores, -Inc. v. Custodio, 964 F.2d 32, 45 (1st Cu. 1992); but "the threshold for establishing the requisite 'abuse of government power' is a high one indeed." Id. That threshold has not been met here.

For all of these reasons, the judgment of the district court in these cases is affirmed.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

EZEQUIEL CASTRO RIVERA, et al., Plaintiffs,

v.

FERNANDO FAGUNDO, et al., Defendants.

CIVIL NO. 03-1287 (RLA)

Order Dismissing The Complaint

The court is called upon at this time to examine the allegations in the complaint to determine whether or not jurisdiction has been properly asserted by plaintiffs.

PROCEDURAL BACKGROUND

This action was instituted by the owners[1] of a property located along the route of a state government highway project originally denominated Highway PR-66 and now designated as the Eastern Corridor. Plaintiffs challenge the design of the drainage discharge system for the project on due process grounds pursuant to 42 U.S.C. § 1983.[2]

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1 The property was originally owned by EZEQUIEL CASTRO RIVERA and his wife, AURORA ADAMES. Although MR. CASTRO RIVERA appears as the sole named party in the caption he passed away on May 4, 2002, prior to the filing of the complaint. The pleading clarifies that decedent is substituted by his widow and their two children, RAMON and IDA CASTRO appearing *pro se*.

2 Plaintiffs instituted a previous suit entitled Ezequiel Castro Rivera v. Puerto Rico Highway and Transportation Authority, Civ. No. 00-1970 (RLA) alleging both constitutional and tortious claims against the PRHTA, various of its officials, as well as the contractor, plan designer and project manager of the highway. In those proceedings plaintiffs averred that the amounts offered as fair compensation in the pending eminent domain proceedings were inadequate. The court determined that it had no jurisdiction over

Named defendants are: FERNANDO FAGUNDO, Director of the PUERTO RICO HIGHWAY AND TRANSPORTATION AUTHORITY ("PRHTA") in his personal capacity,3 the PRHTA, ESTEBAN MUJICA, an officer of the local ENVIRONMENTAL QUALITY BOARD ("EQB") who signed the resolution approving PRHTA's Environmental Impact Statement ("EIS") also in his personal capacity, and BARRET & HALE, a private contracted project designer.

The highway, which is expected to run between the Municipalities of Canovanas and Carolina, seeks to alleviate the heavy traffic congestion generated by the tremendous growth of municipalities located to the West of the larger San Juan metropolitan area. The formal Environmental Impact Statement ("EIS") process commenced in 1992. However, plans for its construction were delayed due to controversies generated by environmental issues. On April 19, 2000, the Puerto Rico Supreme Court found the EIS process deficient and paralyzed construction. See Colón-Cortés v. Pesquera, 2000 WL 424713.

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these claims. *See* Order Dismissing Expropriation-Related Claims (docket No. 146). The § 1983 claims asserted against the private defendants were also dismissed for lack of the requisite "state action". *See* Order Dismissing Claims Asserted against Private Defendants (docket No. 149).

3 The respective spouses and conjugal partnerships of the individual defendants are also included as party defendants.

This suit attacks the adequacy of the process leading to the Environmental Impact Statement approved by the EQB subsequent to the Supreme Court's decision.

ADMINISTRATIVE PROCEEDINGS

The following summarizes plaintiffs' allegations regarding the administrative process leading to the final approved EIS.

Plaintiff RAMON CASTRO participated in the EIS public hearings held by the EQB on January 17, 2002, and raised the drainage problems posed by the project.

On April 17, 2002, codefendant MUJICA issued a resolution pointing to 22 specific deficiencies in the EIS proposed by PRHTA including specifically the failure to provide information regarding the stormwater drainage.

On July 23, 2002, RAMON CASTRO wrote to MR. MUJICA alleging the proposed EIS was contrary to law in that it failed to comply with the local environmental legal provisions and sought to avoid known adverse environmental impacts.

On August 13, 2002, the PRHTA submitted an "updated" version of its EIS which did not address the drainage issues.

Plaintiff RAMON CASTRO again wrote to MR. MUJICA outlining the alleged deficiencies in the PRHTA's proposal.

A public hearing was held on October 3, 2002, on the "updated" version of the EIS at which time RAMON CASTRO again submitted specific deficiencies regarding drainage and flooding which he

contended ran contrary to applicable environmental law and regulations.

On November 5, 2002, the EQB issued a resolution finding that PRHTA had "substantially satisfied" the agency's previous requirements but acknowledged that the PRHTA had failed to provide information on stormwater drainage for the project and instructed it to respond to the issues raised by MR. CASTRO.

On January 7, 2003, the PRHTA submitted a final EIS version in which codefendant BARRET & HALE acknowledges that the drainage is deficient. According to plaintiffs they were not served with a copy of this document.

On February 18, 2003, MR. MUJICA issued EQB Resolution R-03-5-1 approving PRHTA's final EIS. The resolution determined that the submissions by PRHTA and BARRET & HALE were adequate and satisfied EQB's previous requirements.

Plaintiffs allege that the procedure followed by the EQB was flawed because they were not informed of the changes proposed by PRHTA in its EIS version of January 1, 2003. Plaintiffs characterize the fact that they were not notified of the "secret" proposal as "disturbing" and ascribe to it ill motives on defendants' part. In pertinent part, the pleading charges as follows:

[T]he CHANGES to the Improper Drainage raise disturbing questions; not the least of which is the fact that they were submitted in secret. Thus the CHANGES were submitted

secretly; the improper EIS-F was submitted secretly; and Mr. Esteban Mujica secretly approved the Improper EIS-F. The Castro family was never informed, never consulted, and never received an answer as purported in EQB-Resolutions-1, 2. Instead, on February 20, 2003 the Castro family received a copy of the EQB Resolution R-03-5-1 (hereinafter EQB- Resolution-3) signed by Mr. Esteban Mujica and issued on February 18, 2003. EQB-Resolution-3 simply declares that the submittals by PRHTA and Codefendant Barret & Hale are 'adequate'; further declares that PRHTA has 'satisfied' EQB's requirements thus approving PRHTA's Improper EIS-F. Complaint ¶ 14 pp. 17-18 (caps and bold in original).

Additionally, plaintiffs argue the EIS is contrary to law because it does not adequately address the adverse effects of the water discharge as provided for in the pertinent statutes, regulations and manuals. According to plaintiffs, "PRHTA has yet to provide the information on stormwater drainage required in the EQB's own regulations. Moreover, plaintiffs' claim that PRHTA has yet to establish any justification for discharging stormwater from the proposed highway on to the Castro property." Complaint ¶ 15 p. 18.

RULE 12 STANDARD

In disposing of motions to dismiss pursuant to Rule 12(b)(6) Fed. R. Civ. P. the court will accept all factual allegations as true and will make all reasonable inferences in plaintiff's favor.

Frazier v. Fairhaven School Com., 276 F.3d 52, 56 (1st Cir. 2002); Alternative Energy, Inc. v. St. Paul Fire and Marine Ins. Co., 267 F.3d 30, 33 (1st Cir. 2001); Berezin v. Regency Sav. Bank, 234 F.3d 68, 70 (1st Cir. 2000); Tompkins v. United Healthcare of New England, Inc., 203 F.3d 90, 92 (1st Cir. 2000).

Our scope of review under this provision is a narrow one. Dismissal will only be granted if after having taken all well-pleaded allegations in the complaint as true, the Court finds that plaintiff is not entitled to relief under any theory. Brown v. Hot, Sexy and Safer Prods., Inc., 68 F.3d 525, 530 (1st Cir. 1995) cert. den. 116 S.Ct. 1044 (1996); Vartanian v. Monsanto Co., 14 F.3d 697, 700 (1st Cir. 1994). Further, our role is to examine the complaint to determine whether plaintiff has adduced sufficient facts to state a cognizable cause of action. Alternative Energy, 267 F.3d at 36. The complaint will be dismissed if the court finds that under the facts as pleaded plaintiff may not prevail on any possible theory. Berezin, 234 F.3d at 70; Tompkins, 203 F.3d at 93.

SECTION 1983

Section 1983 does not create substantive rights but is rather a procedural mechanism for enforcing constitutional or statutory rights. Albright v. Oliver, 510 U.S. 266, 114 S.Ct. 807, 127 L.Ed.2d 114 (1994); Cruz-Erazo v. Rivera-Montañez, 212 F.3d 617, 621 (1st Cir. 2000). The statute, i.e., § 1983 "'is not itself a source of substantive rights, but a method for vindicating federal rights

elsewhere conferred... by the United States Constitution and federal statutes.'" Rodriguez Garcia v. Municipality of Caguas, 354 F.3d 91, 99 (1st Cir. 2004) (citing Baker v. McCollan, 443 U.S. 137, 144 n.3, 99 S.C. 2689, 61 L.Ed.2d 433 (1979)). Hence, it is plaintiffs' burden to identify the particular underlying constitutional or statutory right that is sought to be enforced via judicial proceedings.

In order to prevail in a § 1983 claim plaintiff must bring forth evidence that (1) defendant acted "under color of state law" and (2) deprivation of a federally protected right. Rogan v. City of Boston, 267 F.3d 24 (1st Cir. 2001); Dimarco-Zappa v. Cabanillas, 238 F.3d 25, 33 (1st Cir. 2001); Collins v. Nuzzo, 244 F.3d 246 (1st Cir. 2001); Cruz-Erazo, 212 F.3d at 612; Barreto-Rivera, 168 F.3d at 45.

It is beyond peradventure that both FAGUNDO and MUJICA were acting within the scope of their duties as state officials during the process leading to this suit. Under particular circumstances, private actors linked to government action may also be deemed to have acted under color of law for purposes of § 1983. In the process of ascertaining whether "acts by a nominally private entity may comprise state action... [the courts have examined whether] with respect to the activity at issue, the private entity is engaged in a traditionally exclusive public function; is 'entwined' with the government; is subject to government coercion or encouragement; or is willingly engaged in joint action with the government." Logiodice v.

Trustees of Maine Central Inst., 296 F.3d 22, 26 (1st Cir. 2002). Brentwood Acad. v. Tenn. Secondary Sch. Athletic Ass'n, 531 U.S. 288, 295-96, 212 S.Ct. 924, 148 L.Ed.2d 807 (2001). See also Perkins v. Londonderry Basketball Club, 196 F.3d 13, 18 (1st Cir. 1999) (phrasing doctrine under "traditional public function", "elaborate financial or regulatory nexus" and "symbiotic relationship".)

Rather than engage in this "fact-sensitive" endeavor, Perkins, 196 F.3d at 18, we shall assume, for purposes of this Order that BARRET & HALE's conduct can be attributed to the state for § 1983 purposes.

Our next step is to ascertain whether plaintiffs were deprived of any federally protected right as a result of the events alleged in the complaint.

Due Process

Plaintiffs claim both procedural and substantive due process violations as a result of the EIS finally approved by the EQB for the aforementioned project. Specifically, plaintiffs contend that the defendants acted contrary to applicable environmental and construction statutes, regulations and manuals in not properly addressing the stormwater discharge issue.

Property Right

In order to establish a due process violation plaintiffs must first establish deprivation of a property right. According to the complaint, plaintiffs' property is affected by water runoff from the

highway project which presents a potential for flooding. They also point to a previous flooding incident. Assuming this situation is sufficient to raise due process concerns, we shall proceed to ascertain whether the aforementioned constitutional guarantee was breached.

Procedural Due Process

The Due Process Clause provides that no state shall "deprive any person of life, liberty or property without due process of law." U.S. Const. amend. XIV, § 1.

In order to properly assert a procedural due process claim under § 1983, plaintiffs must show that: [1] they had a property interest and [2] that defendants, acting under color of state law, deprived them of that property interest without providing them a constitutionally adequate procedure. Licari v. Ferruzzi, 22 F.3d 344, 347 (1st Cir. 1994); Rumford Pharmacy v. City of East Providence, 970 F.2d 996, 999 (1st Cir. 1992); PFZ Properties v. Rodriguez, 928 F.2d 28, 30 (1st Cir. 1991).

It is not sufficient that a deprivation has occurred. Plaintiffs carry the burden of pointing to the lack of constitutionally sound proceedings at the state level. Rumford, 970 F.2d at 999. Plaintiffs must present evidence that the state does not have available review mechanisms comporting with minimum due process requirements. Zinermon v. Burch, 494 U.S. 113, 126, 110 S.Ct. 975, 108 L.Ed.2d 100 (1990). Otherwise, "[i]f the federal courts were to entertain civil rights

complaints based on procedural deprivations for which adequate state remedies exist, 'every disgruntled applicant could move [its procedural grievances] into the federal courts ...[,] any meaningful separation between federal and state jurisdiction would cease to hold and forum shopping would become the order of the day. '" Rumford, 970 F.2d at 999 (citing Roy v. City of Augusta, Me., 712 F.2d 1517, 1523 (1st Cir.1983)).

In order to ascertain the adequacy of the procedures available to plaintiffs "'it is necessary to ask what process the State provided, and whether it was constitutionally adequate. This inquiry would examine the procedural safeguards built into the statutory or administrative procedure ... effecting the deprivations, and any remedies for erroneous deprivations provided by statute or tort law.'" Licari, 22 F.3d at 347 (citing Zinermon v. Burch, 494 U.S. at 126).

The issue before this court centers on an attack to the final EIS approved by EQB. Plaintiff has not specifically pointed to the reasons why the administrative proceedings proved inadequate.[4] The events as described by plaintiff resulting in EQB's eventual approval on February 18, 2003, clearly comport with minimum constitutional safeguards. Plaintiffs actively participated in the various stages of the EQB's decision-making process and were allowed ample opportunity

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4 The fact that they were not served copy of PRHTA's final submission does not render the entire process infirm.

to challenge PRHTA's position. Further, there is no indication that judicial review of an improper EIS is not available. *See* Colón-Cortés v. Pesquera, 2000 WL 424713 (whereby the Puerto Rico Supreme Court found the previous EIS deficient and paralyzed construction).

Just because plaintiffs disagree with the legal soundness of the final result does not mean that the process was not a fair one for procedural due process purposes

Plaintiffs have failed to meet their burden to establish that the procedure available for review of PRHTA's EIS is inadequate. Rather, the arguments as presented challenge instead the legal adequacy of presiding officer's determination due to his purported failure to comply with the applicable statutory provisions.

Accordingly, we find that no legal grounds exist to support plaintiffs' procedural due process claim inasmuch as they had available a constitutionally adequate administrative process with potential for judicial review. Thus, the procedural due process claim is therefore **DISMISSED.**

Substantive Due Process

Even though the due process clause refers only to procedural safeguards, it is settled that it also "contains a substantive component that bars certain arbitrary, wrongful government actions 'regardless of the fairness of the procedures used to implement them.'" Zinermon, 494 U.S. at 125 (citing Daniels v. Williams, 474 U.S. 327, 331, 106 S.Ct. 662, 88 L.Ed.2d 662 (1986).

Procedural due process requires that a proceeding which results in a deprivation of property be a fair one whereas substantive due process guards against arbitrary and capricious government actions. Licari, 22 F.3d at 347.

The courts have consistently held that substantive due process claims are limited to extreme cases and "the threshold for establishing the requisite 'abuse of government power' is a high one indeed." Licari 22 F.3d at 350 (citing Nestor Colón-Medina & Sucrs., Inc. v. Custodio, 964 F.2d 32, 45 (1st Cir. 1992)). "A viable substantive due process claim requires proof that the state action was in and of itself egregiously unacceptable, outrageous, or conscience-shocking". Licari, 22 F.3d at 347 (internal quotation marks and citation omitted); Cruz-Erazo, 212 F.3d at 622. *See also,* Nestor Colón-Medina, 964 F.2d at 45 (substantive due process mechanism limited to "truly horrendous situations").

In describing which action "shocks the conscience" for substantive due process purposes, "[i]t has been said, for instance, that substantive due process protects individuals against state actions which are 'arbitrary and capricious,' or those that run counter to 'the concept of ordered liberty,' or those which, in context, appear 'shocking or violative of universal standards of decency.'" Cruz-Erazo, 212 F.3d at 622 (citing Amsden v. Moran, 904 F.2d 748, 753-54 (1st Cir. 1990).

Deprivations resulting from negligent acts or omissions on the part of state officers are not actionable under due process provisions. Davidson v. Cannon, 474 U.S. 344, 106 S.Ct. 668, 88 L.Ed.2d 677 (1986). Nor is substantive due process protection triggered by merely unsound or erroneous government decisions. Its use is limited to those specific instances involving egregious abuse of governmental power which the courts find shocking. Collins v. City of Harker Heights, 502 U.S. 115, 112 S.Ct. 1061, 117 L.Ed.2d 261 (1992).

Additionally, "violations of state law - even where arbitrary, capricious, or undertaken in bad faith - do not, without more, give rise to a denial of substantive due process". Coyne v. City of Somerville, 972 F.2d 440, 444 (1st Cir. 1992). "The doctrine of substantive due process does not protect individuals from all governmental actions that infringe liberty or injure property in violation of some law. Rather, substantive due process prevents governmental power from being used for purposes of oppression, or abuse of government power that shocks the conscience, or action that is legally irrational in that it is not sufficiently keyed to any legitimate state interests." PFZ Properties, 928 F.2d at 31-2 (citations and internal brackets and quotation marks omitted).

The very nature of this constitutional protection has caused that substantive due process protection be used sparingly. "Courts should guard against unduly expanding the concept of substantive due

process 'because guideposts for responsible decisionmaking in this unchartered area are scarce and open ended'". South County Sand & Gravel Co., Inc. v. Town of South Kingstown, 160 F.3d 834, 835 (1st Cir. 1998) (citing Collins v. City of Harker Heights, 503 U.S. at 125). Substantive due process, as a theory for constitutional redress, has in the past fifty years been disfavored, in part because of its virtually standardless reach." Nestor Colon-Medina, 964 F.2d at 45; Licari, 22 F.3d at 350.

Further, in situations where plaintiffs are protected from undue interference from state actions by specific constitutional guarantees "they must assert their claims under that particular constitutional rubric instead of invoking the more generalized notion of substantive due process." South County Sand & Gravel, 160 F.3d at 835.

Regardless of how plaintiffs phrase their claims,[5] after a careful reading of the complaint their allegations can be summarized as their disagreement with the EQB's interpretation of the law regarding the drainage issue. However, the events as related in the pleadings do not meet the extreme circumstances warranted for a substantive due process action to prevail under § 1983. Even assuming, arguendo, that plaintiffs' interpretation of the law is correct and that the EQB erroneously approved the EIS this is

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5 We do not take a position as to whether the adverse effects of the government's action on plaintiffs' property may constitute a Fifth Amendment "taking". See Ortega Cabrera v. Municipality of Bayamon, 562 F.2d 91 (1st Cir. 1977).

insufficient for a viable substantive due process claim. The conduct by the defendants and the proceedings leading to the final EIS approval as related by plaintiffs do not rise to the level of an "egregious abuse of governmental power" which is shocking to the court as demanded by judicial precedent.

Accordingly, the substantive due process claims are likewise **DISMISSED.**

Conclusion

Based on the foregoing, the court finds that plaintiffs have failed to assert a procedural or substantial due process claim under § 1983 and hence, the complaint is hereby **DISMISSED.**[6]

Judgment shall be entered accordingly.

IT IS SO ORDERED.

San Juan, Puerto Rico, this 18th day of March, 2004.

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6 Because the court finds that plaintiffs have failed to meet their burden under § 1983 there is no need to address the specific alternate issues raised by defendants in their respective motions to dismiss. *See* PRHTA's Motion for Dismissal (docket No. **7**) and Memorandum (docket No. **8**); BARRET & HALE's Motion to Dismiss (docket No. **16**); BARRET & HALE's joinder (docket No. **21**); MUJICA's Motion to Dismiss (docket No. **29**). *See also,* Plaintiffs' Oppositions (docket Nos. **17, 23** and **30**).

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO

EZEQUIEL CASTRO RIVERA, et al., Plaintiffs,

v.

FERNANDO FAGUNDO, et al., Defendants.

CIVIL NO. 03-1287 (RLA)

JUDGMENT

The court having dismissed the claims asserted in the complaint through its Order issued on this date, it is hereby

ORDERED AND ADJUDGED that the complaint be and the same is hereby **DISMISSED.**

IT IS SO ORDERED.

San Juan, Puerto Rico, this 18th day of March, 2004. 18

S/Raymond L. Acosta

RAYMOND L. ACOSTA
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO

EZEQUIEL CASTRO RIVERA, et al.,

Plaintiffs,

v.

Puerto Rico Highway and Transportation Authority, et al.,

Defendants.

CIVIL NO. 00-1970 (RLA)

Order Dismissing Improper Drainage Claims And Local Causes Of Action

On January 17, 2003, the court dismissed the expropriation related claims asserted by plaintiffs in this case[1] as well as the claims filed against various privately-owned entities.[2] The court further instructed plaintiffs to show cause why the constitutional deprivation claims for allegedly improper drainage claims should not be likewise dismissed

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1 *See* Order Dismissing Expropriation-Related Claims (docket No. 24 146) .

2 See Order Dismissing Claims Asserted against Private Defendants and Setting Deadline for Plaintiffs to Show Cause 26 Regarding Improper Drainage Claim (docket No. 149)

The court having reviewed the arguments submitted on plaintiffs' behalf[3] hereby finds that the claims presented do not rise to a constitutional level actionable under 42 U.S.C. § 1983.[4]

PROCEDURAL BACKGROUND

As previously related in our Order issued on January 17, 2003 (docket No. 146) the genesis of this litigation lies with the plans and development of an ambitious government project denominated Highway PR-66 which was expected to run between the Municipalities of Canóvanas and Carolina to alleviate serious traffic congestion along this route.[5]

Plaintiffs, MR. and MRS. EZEQUIEL CASTRO RIVERA,[6] instituted this action asserting both constitutional and tortious claims against the

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3 *See* Response (docket No. 155). A controversy ensued regarding *pro se* representation and the court initially required that plaintiffs continue to appear through counsel. In order to dispose of the outstanding legal issues the court will proceed with the submissions of RAMON CASTRO on behalf of all parties with a property interest on the plot of land in question.

4 A subsequent suit based on essentially the same facts was filed against FERNANDO FAGUNDO, incoming director of the PUERTO RICO HIGHWAY AUTHORITY ("PRHTA") in his personal capacity, the PRHTA, ESTEBAN MUJICA, an officer of the PUERTO RICO ENVIRONMENTAL QUALITY BOARD ("EQB") and BARRET & HALE, project designer, challenging the Environmental Impact Statement ("EIS") as procedurally flawed. *See* Ezequiel Castro Rivera v. Fernando Fagundo, Civ. No. 03-1287 (RLA).

5 This project has generated great controversy in the local forum due to environmental issues. As a result construction was paralyzed by the Puerto Rico Supreme Court. See Colón-Cortés v. Pesquera, 2000 P.R.-Eng. 424713, 2000 WL 424713 (April 19, 2000).

6 MR. RIVERA has since been substituted by his heirs. See 26 Motion for Substitution of Party (docket No. 127).

PUERTO RICO HIGHWAYS AND TRANSPORTATION AUTHORITY (PRHTA), various of its officials as well as the contractor, plan designer and project manager of PR-66.

Plaintiffs' claims in this case are two-fold. First, they challenge the procedure leading up to the expropriation of part of their property located along the way of the aforementioned route which expropriation is currently pending in local court. Additionally, they contend that a water drainage of the PR-66 project was improperly constructed resulting in the discharge of a large volume of water on their property when it rains.

The expropriation claims were dismissed. At this time we review those allegations specifically dealing with the improper drainage claim under constitutional due process standards.[7]

The court will examine plaintiffs' remaining claims pursuant to the provisions of Rule 12(b)(1) Fed. R. Civ. P. Accordingly, it will accept all well-pleaded allegations of the complaint as true and indulge all reasonable inferences therefrom in plaintiffs' favor.

7 Plaintiffs' claim is summarized at ¶ 9 of their Response (docket No. 155) they states:

> The Improper Drainage is the improper diversion of stormwater from the PR-66 project onto Plaintiff's property; and is the result of PRHTA's Over-Arching Policy of Callous Indifference to Citizens' Civil rights while acting jointly with other Codefendants.

Deniz v. Municipality of Guaynabo, 285 F.3d 142, 144 (1st Cir. 2002); Valentin v. Hosp. Bella Vista, 254 F.3d 358, 365 (1st Cir. 2001).

Plaintiffs' claims regarding improper drainage essentially trace those alleged in Civ. No. 03-1287. Plaintiffs challenge the adequacy of the process leading to PRHTA's EIS approved by the EQB which, according to them runs contrary to the applicable environmental statutes and PRHTA's regulations insofar as drainage requirements is concerned.

Section 1983

Section 1983 does not create substantive rights but is rather a procedural mechanism for enforcing constitutional or statutory rights. Albright v. Oliver, 510 U.S. 266, 114 S.Ct. 807, 127 L.Ed.2d 114 (1994); Cruz-Erazo v. Rivera-Montañez, 212 F.3d 617, 621 (1st Cir. 2000). The statute, i.e., § 1983 "'is not itself a source of substantive rights, but a method for vindicating federal rights elsewhere conferred... by the United States Constitution and federal statutes.'" Rodriguez Garcia v. Municipality of Caguas, 354 F.3d 91, 99 (1st Cir. 2004) (citing Baker v. McCollan, 443 U.S. 137, 144 n.3, 99 S.C. 2689, 61 L.Ed.2d 433 (1979)). Hence, it is plaintiffs' burden to identify the particular underlying constitutional or statutory right that is sought to be enforced via judicial proceedings.

In order to prevail in a § 1983 claim plaintiff must bring forth evidence that (1) defendant acted "under color of state law" and (2)

deprivation of a federally protected right. Rogan v. City of Boston, 267 F.3d 24 (1st Cir. 2001); Dimarco-Zappa v. Cabanillas, 238 F.3d 25, 33 (1st Cir. 2001); Collins v. Nuzzo, 244 F.3d 246 (1st Cir. 2001); Cruz-Erazo, 212 F.3d at 612; Barreto-Rivera, 168 F.3d at 45.

There is no controversy over the fact that the remaining named defendants in this case were acting within the scope of their duties as state officials at all relevant times. Therefore, the first element is satisfied. We must then ascertain whether plaintiff was deprived of any federally protected right as a result of the events alleged in the complaint.

Due Process

Plaintiffs claim both procedural and substantive due process violations. Specifically, plaintiffs contend that the defendants acted contrary to applicable environmental and construction statutes, regulations and manuals in not properly addressing the stormwater discharge issue.

Property Right

In order to establish a due process violation plaintiffs must first establish deprivation of a property right. According to the complaint, plaintiffs' property is affected by water runoff from the highway project which presents a potential for flooding. They also point to a previous flooding incident. Assuming this situation is sufficient to raise due process concerns, we shall proceed to

ascertain whether the aforementioned constitutional guarantee was breached.

Procedural Due Process

The Due Process Clause provides that no state shall "deprive any person of life, liberty or property without due process of law." U.S. Const. amend. XIV, § 1.

In order to properly assert a procedural due process claim under § 1983, plaintiffs must show that: [1] they had a property interest and [2] that defendants, acting under color of state law, deprived them of that property interest without providing them a constitutionally adequate procedure. Licari v. Ferruzzi, 22 F.3d 344, 347 (1st Cir. 1994); Rumford Pharmacy v. City of East Providence, 970 F.2d 996, 999 (1st Cir. 1992); PFZ Properties v. Rodriguez, 928 F.2d 28, 30 (1st Cir. 1991).

It is not sufficient that a deprivation has occurred. Plaintiffs carry the burden of pointing to the lack of constitutionally sound proceedings at the state level. Rumford, 970 F.2d at 999. Plaintiffs must present evidence that the state does not have available review mechanisms comporting with minimum due process requirements. Zinermon v. Burch, 494 U.S. 113, 126, 110 S.Ct. 975, 108 L.Ed.2d 100 (1990). Otherwise, "[i]f the federal courts were to entertain civil rights complaints based on procedural deprivations for which adequate state remedies exist, 'every disgruntled applicant could move [its procedural grievances] into the federal courts ...[,] any meaningful

separation between federal and state jurisdiction would cease to hold and forum shopping would become the order of the day.'" Rumford, 970 F.2d at 999 (citing Roy v. City of Augusta, Me., 712 F.2d 1517, 1523 (1st Cir. 1983)) .

In order to ascertain the adequacy of the procedures available to plaintiffs "'it is necessary to ask what process the State provided, and whether it was constitutionally adequate. This inquiry would examine the procedural safeguards built into the statutory or administrative procedure ... effecting the deprivations, and any remedies for erroneous deprivations provided by statute or tort law.'" Licari, 22 F.3d at 347 (citing Zinermon v. Burch, 494 U.S. at 126) .

The issue before this court centers on an attack to the EIS-related administrative proceedings. Plaintiff has not specifically pointed to the reasons why the administrative proceedings have proven inadequate. The court takes judicial notice of the allegations in Civ. No. 03-1287 regarding the procedure leading to EQB's eventual approval of PRHTA's proposed EIS on February 18, 2003 and find these clearly comport with minimum constitutional safeguards. Plaintiffs actively participated in the various stages of the EQB's decisionmaking process and were allowed ample opportunity to challenge PRHTA's position. Further, there is no indication that judicial review of an improper EIS is not available. *See* Colón-Cortés v.

Pesquera, 2000 WL 424713 (whereby the Puerto Rico Supreme Court found the previous EIS deficient and paralyzed construction).

Just because plaintiffs disagree with the legal soundness of the final result does not mean that the process was not a fair one for procedural due process purposes. Thus, we conclude that plaintiffs have failed to meet their burden to establish that the procedure available for review of PRHTA's EIS is inadequate.

Accordingly, we find that no legal grounds exist to support plaintiffs' procedural due process claim inasmuch as they had available a constitutionally adequate administrative process with potential for judicial review. Thus, the procedural due process claim is therefore **DISMISSED.**

Substantive Due Process

Even though the due process clause refers only to procedural safeguards, it is settled that it also "contains a substantive component that bars certain arbitrary, wrongful government actions 'regardless of the fairness of the procedures used to implement them.'" Zinermon, 494 U.S. at 125 (citing Daniels v. Williams, 474 U.S. 327, 331, 106 S.Ct. 662, 88 L.Ed.2d 662 (1986).

Procedural due process requires that a proceeding which results in a deprivation of property be a fair one whereas substantive due process guards against arbitrary and capricious government actions. Licari, 22 F.3d at 347.

The courts have consistently held that substantive due process claims are limited to extreme cases and "the threshold for establishing the requisite 'abuse of government power' is a high one indeed." Licari 22 F.3d at 350 (citing Nestor Colón-Medina & Sucrs., Inc. v. Custodio, 964 F.2d 32, 45 (1st Cir. 1992)). "A viable substantive due process claim requires proof that the state action was in and of itself egregiously unacceptable, outrageous, or conscience-shocking". Licari, 22 F.3d at 347 (internal quotation marks and citation omitted); Cruz-Erazo, 212 F.3d at 622. *See also,* Nestor Colón-Medina, 964 F.2d at 45 (substantive due process mechanism limited to "truly horrendous situations").

In describing which action "shocks the conscience" for substantive due process purposes, "[i]t has been said, for instance, that substantive due process protects individuals against state actions which are 'arbitrary and capricious,' or those that run counter to 'the concept of ordered liberty,' or those which, in context, appear 'shocking or violative of universal standards of decency.'" Cruz-Erazo, 212 F.3d at 622 (citing Amsden v. Moran, 904 F.2d 748, 753-54 (1st Cir. 1990) .

Deprivations resulting from negligent acts or omissions on the part of state officers are not actionable under due process provisions. Davidson v. Cannon, 474 U.S. 344, 106 S.Ct. 668, 88 L.Ed.2d 677 (1986). Nor is substantive due process protection triggered by merely unsound or erroneous government decisions. Its

use is limited to those specific instances involving egregious abuse of governmental power which the courts find shocking. Collins v. City of Harker Heights, 502 U.S. 115, 112 S.Ct. 1061, 117 L.Ed.2d 261 (1992) .

Additionally, "violations of state law - even where arbitrary, capricious, or undertaken in bad faith - do not, without more, give rise to a denial of substantive due process". Coyne v. City of Somerville, 972 F.2d 440, 444 (1st Cir. 1992). "The doctrine of substantive due process does not protect individuals from all governmental actions that infringe liberty or injure property in violation of some law. Rather, substantive due process prevents governmental power from being used for purposes of oppression, or abuse of government power that shocks the conscience, or action that is legally irrational in that it is not sufficiently keyed to any legitimate state interests." PFZ Properties, 928 F.2d at 31-2 (citations and internal brackets and quotation marks omitted).

The very nature of this constitutional protection has caused that substantive due process protection be used sparingly. "Courts should guard against unduly expanding the concept of substantive due process 'because guideposts for responsible decisionmaking in this unchartered area are scarce and open ended'". South County Sand & Gravel Co., Inc. v. Town of South Kingstown, 160 F.3d 834, 835 (1st

Cir. 1998) (citing Collins v. City of Harker Heights, 503 U.S. at 125). Substantive due process, as a theory for constitutional

redress, has in the past fifty years been disfavored, in part because of its virtually standardless reach." Nestor Colon-Medina, 964 F.2d at 45; Licari, 22 F.3d at 350.

Further, in situations where plaintiffs are protected from undue interference from state actions by specific constitutional guarantees "they must assert their claims under that particular constitutional rubric instead of invoking the more generalized notion of substantive due process." South County Sand & Gravel, 160 F.3d at 835.

Regardless of how plaintiffs phrase their claims, after a careful reading of the complaint their allegations can be summarized as their disagreement with the EQB's interpretation of the law regarding the drainage issue. However, the events as related in the pleadings do not meet the extreme circumstances warranted for a substantive due process action to prevail under § 1983. Even assuming, arguendo, that plaintiffs' interpretation of the law is correct and that the EQB erroneously approved the EIS this is insufficient for a viable substantive due process claim. The conduct by the defendants and the proceedings leading to the final EIS approval as related by plaintiffs do not rise to the level of an "egregious abuse of governmental power" which is shocking to the court as demanded by judicial precedent.

Accordingly, the substantive due process claims are likewise **DISMISSED.**

Supplemental Jurisdiction

The court having dismissed the federal claims pursuant to 28 U.S.C. § 1367 (c) (3) it declines to exercise supplemental jurisdiction over the negligence state law claims.

Conclusion

Based on the foregoing, the court finds that plaintiffs have failed to assert a procedural or substantial due process claim under § 1983 and hence, these are hereby **DISMISSED.**

The negligence state claims asserted under supplemental jurisdiction are also **DISMISSED.**

Judgment shall be entered accordingly.

IT IS SO ORDERED.

San Juan, Puerto Rico, this 18th day of March, 2004.

S/Raymond L. Acosta
RAYMOND L. ACOSTA
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO

EZEQUIEL CASTRO RIVERA, et al.,

Plaintiffs,

v.

Puerto Rico Highway and Transportation Authority, et al.,

Defendants.

CIVIL NO. 00-1970 (RLA)

Order Dismissing Expropriation-Related Claims

Defendants 1 have moved the court to dismiss the claims asserted against them. The court having reviewed the arguments submitted by the parties as well as the documents in file hereby rules as follows.

BACKGROUND

The '. genesis of this litigation lies with the plans and the development of an ambitious government project denominated Highway PR-66 which was expected to run between the Municipalities of Canóvanas and Carolina to a11eviate serious traffic congestion along this route. 2

1 The motion was submitted by PRHTA and the request adopted by codefendants WALTEB RIVERA (docket No. 32), SERGIO GONZALEZ and ANGEL RIVERA-SALAS (docket No. 34) and RIO CONSTRUCTION (docket No. 35).

2 This project has generated great controversy in the local forum due to environmental issues. As a result construction was paralyzed by the _Puerto Rico Supreme Court. See Colón-Cortes v. Pesquera, *2000* P.R. -Eng. 424713, 2000 WL 424713 (April 19, 2000)

Plaintiffs,. and MRS, EZEQU!EL CASTRO RIVERA, instituted this action asserting both constitutional and tortious claims against the PUERTO RICO HIGHWAYS AND TRANSPORTATION AUTHORITY (PRHTA), various of its officials as well as the contractor, plan designer and project manager of PR-66.Plaintiffs' claims are two-fold, First, they challenge the procedure leading up to the expropriation of part of their property located along the way of the aforementioned route which expropriation is currently pending in local court. Additionally, they contend that a water drainage of the PR-66 project was improperly constructed resulting in the discharge of a large volume of water on their property when it rains.

In the motion presently before the court defendants seek to dismiss those claims pertaining to the expropriation of a portion of their land.

The court will entertain defendants' motion to dismiss pursuant to the provisions pf Rule 12(b) (1) Fed. R. *Civ.* P. Accordingly, it will accept all well-pleaded allegations of the complaint as true and indulge all reasonable inferences therefrom in plaintiffs' favor. Deniz v, Municipality of Guaynabo, ,285 F.3d 142, 144 (1st Cir. 2002); Valentin v, Bella Vista, 1541 F.3d 158, 365 (1st Cir. 2001).

MR. RIVERA has since been substituted by his heirs. See Motion for Substitution of Party (docket No. 127).

Expropriation-Related Claims

On June 30, 1998 the PRHTA instituted eminent domain proceedings for the taking of 2.2422 "cuerdas" of the plaintiffs' 4 and posted the sum of $56,055.00 as compensation therefor. Plaintiffs challenged the adequacy of this sum. The local condemnation proceedings are still ongoing pending resolution of the adequate compensation issue.

The expropriation-related claims charge both a Fifth Amendment takings claim and a substantive due process violation pursuant to 42 USC. § 1983. In support thereof plaintiffs contend that the comparable sales utilized by PRHTA for valuation of the expropriated tract of land do not comport with the applicable legal provisions which resulted in a deficient compensation amount being offered instead. Further, they argue that during the administrative phase leading to the expropriation suit PRHTA, through its agents, failed to abide by its obligation to deal in good faith. The Fifth Amendment to the, U.S. Constitution protects owners from deprivation of their property without. just compensation. As the provision clearly indicates, it "does not proscribe taking of property; it proscribes taking *without just compensation.*" Williamson County Reg"l Planning Com'n 'v. Hamilton Bank, 473 U.S. 172, 194, 105 S.Ct 3108, 87 L.Ed.2d 126: (1985) (italics supplied);

4.According to the pleadings plaintiffs' original property consisted of approximately 15 cuerdas. Complaint p.2.

Deniz, 285 F3d at 146; Culebras Enter. I Corp. v. Rivera-Rios, 813 F2d 506, 515 (pt Cir. 1987).

> [B]ecause the; Fifth Amendment proscribes takings *without just compensation,* no constitutional violation occurs until just compensation has been denied. The nature of the constitutional right therefore requires that a property owner utilize procedures for obtaining compensation before bringing a § 1983 action.

Wlll1amson, ! 473 U.S. at 195; Culebras Enter., 813 F.2d at 516..

The courts have been particularly, keen on safeguarding the ripeness requirement in cases involving Fifth Amendment claims. In suits involving taking of property ripeness principles require that final, determination be made at the local level prior to federal courts venturing into matters related to compensation.

The ripeness requirement may be avoided in those cases where the remedies; provided at the local level are either unavailable or inadequate". Williamson, 473 US at 196-197; Deniz, 285 F.3d at 146;Gilbert-v. City of Cambridge,. 932 F.2d 51, 65 (1"" Cir. 1991). However, this exception *is* narrowly construed, and the claimant must

carry the heavy burden of showing unavailability or inadequacy." Deniz, 285 at 146.

Plaintiffs contend that the remedies available in the pending eminent domain action will prove inadequate because the do not allow for compensation of the fees the will pay counsel in the process of contesting the amount offered for the expropriated land. We find the argument unconvincing and decline to find that attorneys fees constitute an integral part of the just compensation constitutional mandate. Further, even assuming Plaintiffs' argument is correct, failure to pay for legal fees does not necessarily render the entire local proceeding inadequate to the point of warranting their avoidance altogether.

Plaintiffs further challenge the adequacy of the pending local proceedings arguing that the government took possession of their property upon deposit of "an arbitrary and paltry amount". Complaint p.40. All the takings clause requires, however, is that a mechanism be in place for determination of the reasonable value of the expropriated land.

[T]he Fifth Amendment [does not] require that just compensation be paid in advance of, or contemporaneously with the taking all that is required is that a reasonable, certain and adequate provision for obtaining compensation at the time of the taking. If government has provided an adequate process for obtaining compensation and

if resort to that process yields just compensation, then the property owner has no claim against the Government for a taking.

Williamson,, 473 US at 194 (citations, internal quotations and brackets omitted).

CONCLUSION

Plaintiffs characterize part of their claims as a substantive due process deprivation the essence of their grievance as described lies with the fact that the amounts proferred as fair compensation in the eminent domain proceedings are inadequate. Thus, the substantive due process violation is premised on the same facts used to support their takings claim.

Dressing a takings claim in the raiment of a due process violation does not serve to evade the exhaustion requirement. Here... the... condemnation remedy represents an arguably available and adequate means of obtaining compensation for the alleged taking... Thus no substantive due process claim will lie until that remedy is exhausted. Deniz, 285 F3d at 149.

Both the taking and substantive due process claims are inextricably intertwined. It is difficult to conceive how we may proceed to make determination of the correct valuation of the condemned property when that is the very issue the local expropriations court must determine. "It would be duplicative for a

federal court to assess damages on a due process theory while a commonwealth of Puerto Rico court was in the process of awarding just compensation for the same taking". Culebras Enter. Corp. v. Rivera-Rios, 813 F.2d 506, 516 (1st cir 1987)

Based on the foregoing defendants' request is GRANTED 5. Accordingly, we find that the expropriation-related federal claims are not ripe for: adjudication and therefore, they are hereby

DISMISSED FOR LACK OF SUBJECT MATTER JURISDICTION.

IT IS *SO* ORDERED.

San Juan, Puerto Rico, this 16th day of January, 2003

S/Raymond L. Acosta
RAYMOND L. ACOSTA
United States District Judge

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5 See PRHTA's motion-to-dismiss [docket-No. **64**]; plaintiffs' opposition [Docket-No. **65**]; PRHTA's reply [Docket-No. **66**] and Plaintiffs' sur-replay [Docket-No. **67**]

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO

EZEQUIEL CASTRO RIVERA, et al.,

Plaintiffs,

v.

Puerto Rico Highway and Transportation Authority, et al.,

Defendants.

CIVIL NO. 00-1970 (RLA)

Judgment Dismissing Expropriation-Related Claims

The court having dismissed plaintiffs' expropriation-related claims through its Order issued on this date, it is hereby ORDERED AND ADJUDGED that expropriation-related federal claims 16 asserted are not in the complaint ripe for adjudication and therefore, they are hereby **DISMISSED FOR LACK OF SUBJECT MATTER JURISDICTION.**

IT IS SO ORDERED.

San Juan, Puerto Rico, this 16th day of January, 2003

S/Raymond L. Acosta
RAYMOND L. ACOSTA
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO

EZEQUIEL CASTRO RIVERA, et al.,

Plaintiffs,

v.

Puerto Rico Highway and Transportation Authority, et al.,

Defendants.

CIVIL NO. 00-1970 (RLA)

ORDER DENYING PRELIMINARY INJUNCTION PETITION

This action was instituted by the owners of a tract of land expropriated by the PUERTO RICO HIGHWAYS AND TRANSPORTATION AUTHORITY (PRHTA) for the development of PR-66 Highway. The complaint alleges violations to the takings clause as well as due process of law. Plaintiffs have moved the court to enter a preliminary injunction enjoining the PRHTA from submitting an allegedly improper Environmental Statement (EI8) to the local ENVIRONMENTAL QUALITY BOARD (EQB) in relation to the PR-66 Highway project. In support of their request plaintiffs argue that the aforementioned EIS contravenes the determination made by the Puerto Rico Supreme Court with regard to the project in two opinions issued disposing of environmental challenges to the PR-66 Highway construction. See Colon Cortes v. Pesquera, 2000 P.R.-Eng. 424713, 2000 WL 424713 (April 19, 2000) and Colon-Cortes v. Pesquera, 99 TSPR 85, 1999 WL 371676 (June 2nd 1999)

The court agrees with PRHTA's opposition to the petition on the grounds that we have no jurisdiction to entertain plaintiffs' request.

First, as plaintiffs themselves concede in their motion, the order purportedly breached was issued by Puerto Rico the Supreme Court. Further, as specifically pointed out by the Puerto Rico Supreme Court in Colon Cortes v. Pesquera, 99 TSPR 85, 1999 WL 371676 the proper remedy for attacking the adequacy of an EIS is by seeking relief before the Puerto Rico EQB in accordance with the procedure set forth in 12 LPRA §1134 (1997) and the pertinent regulations issued by said agency which provide for judicial review of the administrative determination.

Based on the foregoing, we find that this Court lacks jurisdiction to entertain plaintiffs' request. Accordingly, petition the for . preliminary injunction is hereby DENIED:2'\

IT IS SO ORDERED.

San Juan, Puerto Rico, this 16th day of January, 2003

S/Raymond L. Acosta
RAYMOND L. ACOSTA
United States District Judge

1 According to the motion, "it is shocking to observe that PRHTA has yet again disregarded the instructions of the Supreme Court of P.R. and submitted an Improper EIS-P.H (Docket No. 114 _ 2).

2 See Verified Motion for Preliminary Injunction... (docket No. 114); Motion to Issue Unopposed Request for Injunction (docket No. 116); Opposition to Plaintiff's Request for Injunction (docket No. 117); Reply to PRHTA's Opposition... (docket No. 121); Request to Set Aside Plaintiff's Reply... (docket No. 124); Motion Informing that EQB Stopped Project... (docket No. 128) and Additional Motion for Oral Hearing (docket No. 131)

Relevant Statutes:

Fourteenth Amendment
-Due Process Clause
-Equal Protection of the Law

First Amendment
- Freedom of Speech
- Right to Seek Redress

Seventh Amendment
- Right to Trial by Jury

42 USC §1983

FIRREA (12 U.S.C. §§3310, 3331-3351)

Uniform Standards of
Professional Appraisal Practice

9 LPRA §2009(e) - PRHTA's responsibilities

12 LPRA §701 - Drainage

31 LPRA §1711 - Drainage

12 LPRA §1124 - Environmental

12 LPRA §1136(e)

- See Complaint 04-2324 JAF -Standards of Evaluation

20 LPRA Chapter 75 - Appraisals

31 LPRA §1211-1212 - Physical Demarcation

31 LPRA §3343 - *res judicata*

32 LPRA §1781 - Public Information

32 LPRA §2902

PRHTA Highway Design Manual

PRHTA's Regulation No. 4413

FRCivP Rule 19 (2)(i)
FRCivP Rule 20 (a)
FRCivP Rule 26

Local Rule 83.1 h:

A person who is not a member of the bar of this Court, and who is not otherwise eligible for admission pursuant to these rules, will only be allowed to appear and practice before the Court *pro se,* that is, on his or her own behalf. That representation may not be delegated to any other person, including a spouse, parent or other relative, nor to any other party on the same side who is not represented by an attorney. A nonattorney guardian for a minor or an incompetent person must be represented by counsel.

Case No. /Judgment	Comments
==========	========
Case 00-1970 RLA	
Docket-No. **145** Abandon Jurisdiction on the Improper EIS	ORDER: "We find that this Court lacks jurisdiction to entertain plffs' request." (see Docket) Clear Error in disregard of: Patsy v. Board of Regents, 102 S.Ct. 2557 (1982) NO mention of the Equal Protection of the Law
Docket-No. **147** No Subject Matter Jurisdiction	"JUDGMENT dismissing expropriation-related claims for lack of subject matter jurisdiction." (see Docket) NO such expropriation-related claims; instead, fabrications by PRHTA. NO decision on Pre-Deprivation Due Process Violation NO decision on the Improper Drainage NO mention of the Equal Protection of the Law Misapplication of Williamson County v. Hamilton Bank, 473 U.S. 172 (1985)

Docket-No. **149** No Jurisdiction	"ORDER granting [107-1] motion to Dismiss for Lack of Jurisdiction filed by Greiner Caribe, Rio Construction & Barret & Hale." (see Docket) Misapplication of the State Action Doctrine NO mention of the Equal Protection of the Law
Docket-No. **174** No Jurisdiction Irrational; Moot; Contradiction	"The court will examine plaintiffs' remaining claims pursuant to the provisions of Rule 12(b)(1) Fed. R. Civ. P. [Jurisdiction]" (page 3) Improper reference to Jurisdiction and forum shopping (page 9) Irrational: attempts to dismiss the Improper Drainage claims for case 00-1970 RLA, without even addressing the issue and on the basis of irrational reference to other incongruous events. Moot: the Order completely disregards the fact the entire project PR-66 project was still enjoined at that time; and that a new legally constituted "Eastern Corridor" project with a new incarnation and a new configuration of the Improper Drainage was in the process of construction. Contradiction: the new incarnation of the Improper Drainage contradicts PRHTA's position on the entire issue, and calls for a Judgment by DEFAULT

	against the relevant Codefendants on this matter.
	NO mention of the Equal Protection of the Law
Case 03-1287 RLA	
Docket-No. **48**	
No Jurisdiction	"The court is called upon at this time to examine [...] whether or not jurisdiction has been properly asserted by plaintiffs. [first sentence Docket-No. **48**]
	Improper reference to Jurisdiction and forum shopping (page 10).
	NO Dismissal of the new incarnation of the Improper Drainage.
	NO Dismissal of PRHTA, Codefendant Fagundo or Codefendant Barrett & Hale –nor of their violations of Environmental Law. NO mention of the Equal Protection of the Law
Case 04-2324 JAF	
Docket-No. **62**	Misstate Local Rule 83.1 h
Dismiss Mother and Sister	NO Same Parties NO Equal Protection of Law
Res Judicata	*After* Previous Cases Closed –Contravene *Semtek*
Nonexistent Immunity	Non-judicial Acts

Cases ➤➤ Codefendants ▼	00-1970 RLA	03-1287 RLA	04-2324 JAF	06-1313 CCC
Puerto Rico Highway Authority aka PRHTA	**yes**	**yes**	**yes**	**yes**
Sergio González	yes	---	---	---
Angel Rivera Salas	yes	---	---	---
Walter Rivera	yes	---	---	---
Río Construction	yes	---	---	---
Greiner Caribe	yes	---	---	---
Barrett & Hale	yes	yes	---	yes
Fernando Fagundo	---	yes	Yes	---
Esteban Mujica	---	yes	---	---
Héctor López-García	---	---	Yes	---
LPC&D Las Piedras Const.	---	---	---	yes
Villegas Associates	---	---	---	yes

Common /Difference

case 04-2324 JAF +03-1287 RLA 2/5 = 40% Difference= 60% case 04-2324 JAF +Previous 1/10 = 10% Difference= 90%	case 06-1313 CCC+Previous 1/12 = 8% Difference= 92%

Abbreviations And Definitions

Bogus Eviction Order

Improper order by state court judge demonstrating collusion between PRHTA and the state court. Judge approves order on December 13, 2004; and the actual eviction notice is issued on December 16, 2004 (see record) ordering the eviction of land in a case in which the relevant land had *already* been transferred more than six (6) years earlier in 1998 –and this transfer had already had been confirmed by an action to quiet title in 2000. Further, the *very same* judge was fully aware of the previous transfer and quiet title; since he himself had presided case KEF 98-0904; and since he himself had *closed* that very case over a year earlier in 2003. Furthermore, the order does not specify any particular parcel or even include any proper drawing. But most of all, at the time of the order *both* the judge and PRHTA were *sub judice* in case 04-2324 JAF for precisely this very fraudulent manipulation and subversion by PRHTA in order to achieve the Unconstitutional Dispossession and Destruction of the Castro parcel –yet PRHTA shamelessly requested this improper order in order to achieve a *fait accompli*.

Castro-appraiser

Mr. Carlos Centeno, appraiser /consultant. His appraisal report reflects 3 transactions contiguous /adjacent to the Castro parcel; and appraises the Castro parcel at $28 per square meter.

The Improper Appraisals -

Improper and fraudulent appraisals performed in repeated and systematic contravention of professional standards and the provisions of law; e.g. USPAP, 20 LPRA Chapter 75, etc. The Improper Survey was also used as a mechanism to generate Improper Appraisals.

The Improper Drainage -

The culvert and other associated elements and activities that improperly discharge storm-water from the PR-66 highway onto the Castro family's private property. The initial version of the Improper Drainage construction did not itself invade the remainder of the Castro property; but discharged storm-water a short distance from the fence line; and that water would subsequently flow onto the Castro property. Injunctive relief has been requested against the initial version discussed in case 00-1970 RLA; as well as the new incarnation which now attempts to invade the Plaintiffs' property and is addressed in case 03-1287 RLA.

The Improper Surveys

Manipulation of surveys by PRHTA and the Codefendants in order to manipulate appraisal values and other fraudulent purposes. The survey of the relevant area submitted by PRHTA to the state court has been revealed to contain fundamental discrepancies and thereby rendered fraudulent and invalid (e.g. 5 different area values for the same parcel). Yet PRHTA attempts to improperly use this survey as part of the Unconstitutional Dispossession and Destruction.

Las Piedras Construction (L.P.C. & D.)

Primary contractor for the construction of the relevant area of the project since 2003. Has acted jointly with PRHTA; and has illegally invaded the Castro property on numerous occasions. Is involved in the secret changes to project subsequent to 2003; and has used Improper Surveys, and the Threat of Deadly Force to fraudulently impose the Unconstitutional Dispossession and Destruction of the Castro parcel. Has also forced the new incarnation of the Improper

Drainage upon Castro property; despite the obvious Adverse Impact upon the land.

Pattern-of-Piping Theory

New PRHTA theory alleging that PRHTA can interfere upon private land in order to connect its drainage pipes to a culvert within such private land; and this action is based solely on the mere existence of said culvert. PRHTA alleges that the culvert establishes a Pattern-of-Piping; and that the new incarnation of the Improper Drainage follows this theory.

Physical Demarcation -

Legally binding *action for quiet title* taken on January 12, 2000, pursuant to 31 LPRA §1211-1212, and whereby PRHTA acknowledged that the Castro property would ONLY suffer the change of a *new southern boundary*; and such boundary was defined by a fence and a trench (CUT) –which were created by PRHTA itself. The initial agreement on the *new southern boundary* was established by PRHTA three (3) earlier in January 1997; was implemented in 1998; and was confirmed by the aforementioned *action for quiet title* in January 2000.

PR-66 highway -

The same name refers to both the previous version, and the new "Eastern Corridor".

Pre-Deprivation Due Process Violation

Group of Claims in case 00-1970 RLA against Codefendants PRHTA; Sergio González; Angel Rivera Salas; and Walter Rivera. Many of these Due Process violations involve the deprivation of the provisions of PRHTA's Regulation 4413; as well as other statutes and standards such as 20 LPRA Chapter 75; FIRREA; USPAP; etc.

PRHTA -

The Puerto Rico Highway and Transportation Authority. The state agency responsible for all aspects of public roads; including the PR-66 highway. Also a Codefendant in case 00-1970 RLA; case 03-1287 RLA; and case 04-2324 JAF. Has not answered any of the Complaints.

PRHTA-appraiser

Mr. Carlos Rodríguez Alicea. Submits a 2nd PRHTA appraisal with the same deficiencies as the original appraisal. Never saw the parcel prior to its destruction; disregarded the information on nearby transactions; and submits transactions that are 2-3 km distant from the parcel which is appraised at $10.38 per square meter.

PRHTA's Over-arching Policy of Callous Indifference to Citizens' Civil Rights -

Continuing, unrelenting, and unrepentant policy that presumes that PRHTA is above the law. It constitutes the systemic violation of numerous statutes and regulations; as well as the deprivation of any semblance of Due Process and the Equal Protection of the Law. These deprivations have become frequent; and are manifest in the record at federal court.

Single-Flood Fabrication

New and/or repackaged PRHTA allegation stating that there has been *only one* flood upon the Castro property due to a single and unique meteorological event. The initial version of Improper Drainage is somehow declared innocent of all involvement in this singular flooding; and somehow all other past, present, and future flooding is denied.

Trespass Fabrication

Fraudulent Misrepresentation by PRHTA and Las Piedras Construction (L.P.C. & D.) intended to conceal the Unconstitutional Dispossession And Destruction. Since 2003 PRHTA has concealed its nalicious intent by alleging a *single* event of "vegetation damage"; this has now been modified into a *single* event of "trespass". This fabrication is particularly egregious in light of the well documented record of a *multiplicity* of events; in light of the destruction of an established boundary (see Physical Demarcation); in light of the Improper Survey; in light of the violation of civil and criminal law; and in light of the *Bogus* Eviction Order.

Unconstitutional Dispossession and Destruction

The Improper, Fraudulent and Vindictive dispossession and destruction of the Castro private property based on the Improper Survey.

Unconstitutional Expropriation -

February 2004, case KEF 04-0162. Improper, Vindictive, and unjustified expropriation of additional Castro property not related to the highway project – when it had been established that such property would not be affected. The intent, among others, was to evade the Federal Court; and conceal the deficiencies of the Improper Drainage including the adverse environmental impact of such storm-water discharge.

USPAP

Uniform Standards of Professional Appraisal Practice.